

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

: **Civil Action No.**

TRAVELERS EXCESS AND SURPLUS

LINES COMPANY a/s/o George Butsikaris Realty Inc., 27
Park Place Associates Inc., and other interested insureds under
the relevant policy of insurance
Plaintiff,

vs.

x

PHO KING INC., NEW DANNY CLEANING INC., NY FIRE
TECH INC.

Defendants.

COMPLAINT

Plaintiff TRAVELERS EXCESS AND SURPLUS LINES COMPANY a/s/o George Butsikaris Realty Inc., 27 Park Place Associates Inc. (hereinafter "27 PARK"), and other interested insureds under the relevant policy of insurance by and through their attorneys SHEPS LAW GROUP, P.C. as and for its Complaint against the defendants PHO KING INC., NEW DANNY CLEANING INC., and NY FIRETECH INC., hereby alleges as follows:

PARTIES

1. At all relevant times herein, plaintiff TRAVELERS EXCESS AND SURPLUS LINES COMPANY (hereinafter "TRAVELERS") was a foreign corporation organized under the laws of the State of Connecticut with its principle place of business at One Hartford Square, Hartford, Connecticut and was at all times hereinafter licensed to issue policies of insurance in the state of New York.

2. TRAVELERS provided insurance for the real and business property of George Butsikaris Realty Inc., 27 PARK, and other interested insureds under the relevant policy of insurance.

3. At all relevant times hereto, George Butsikaris Realty Inc. and/or 27 PARK owned/managed a building located at 107-119 Church Street, New York, New York.

4. Upon information and belief, at all relevant times herein, defendant NEW DANNY CLEANING INC. (hereinafter "NEW DANNY") was and still is a corporation duly organized and existing under the laws of the State of New York with its principal place of business at 37-20 103rd Street, Corona, New York 11368 and was in the business of performing *inter alia* cleaning services and repair services to kitchen ductwork.

5. Upon information and belief and at all times hereinafter mentioned, the defendant PHO KING INC. (hereinafter "PHO KING") was and still is a New York Corporation with its principal place of business located at 111 Church Street, New York, New York.

6. At all times relevant hereto, defendant PHO KING operated a Vietnamese restaurant on the 1st floor of the 111 Church Street, New York, New York.

7. At all times relevant hereto, defendant NY FIRETECH was and still is a New York Corporation that operated a fire protection business with a principal place of business located at 40-50 192nd Street, Flushing, New York 11358.

JURISDICTION

8. The jurisdiction of this Court is based upon diversity of citizenship pursuant to 28 U.S.C.A §1332, and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Venue is properly laid in this judicial district on the basis of the place of occurrence.

THE LOSS

9. Prior to September 1, 2017, the defendant PHO KING performed cooking in its tenancy and utilized a kitchen exhaust system for its venting needs.

10. Upon information and belief prior to September 1, 2017 the defendant PHO KING's kitchen exhaust ducts became clogged with grease and other combustible materials obstructing air flow through its exhaust system.

11. Upon information and belief prior to September 1, 2017 the defendant NEW DANNY performed exhaust duct cleaning and repair services for PHO KING.

12. Upon information and belief prior to September 1, 2017 defendant NY FIRETECH was present at the PHO KING restaurant at 111 Church Street, New York, New York performing fire suppression system work for PHO KING.

13. Upon information and belief prior to September 1, 2017, NY FIRETECH and/or PHO KING installed and maintained the fire suppression system at the premises.

14. Upon information and belief prior to September 1, 2017 the defendants, installed, altered, modified and/or repaired the kitchen equipment, exhaust ductwork, and fire suppression system.

15. On September 1, 2017 a fire occurred at Pho King restaurant. The fire spread through the premises and adjacent structure resulting in extensive smoke, fire, soot, water and related property and business damages to Plaintiff's insureds' building causing severe and substantial damage to Plaintiff's property in excess of THREE MILLION DOLLARS (\$3,000,000.00).

**AS AND FOR A FIRST CAUSE OF ACTION AS TO ALL DEFENDANTS -
NEGLIGENCE-**

16. Plaintiff fully incorporates by reference the averments contained in paragraphs 1 through 15 inclusive.

17. The occurrence referred to in paragraph 15 and the consequent damage to the plaintiff's insureds' property was proximately caused by the negligence, negligent per se, gross negligence, carelessness and negligent omissions of the defendant, its agents, servants, workmen and/or employees in:

- a. Causing a fire by the careless use of cooking equipment and/or careless cooking;
- b. failing to properly inspect, repair, maintain, clean and/or certify the kitchen ventilation and exhaust system at the premises in a safe and prudent fashion;
- b. failing to properly install the ventilation system in place in the kitchen at the premises in a fashion to avoid the ignition of a fire;
- c. failing to recognize the obvious risk of igniting a fire by the poor installation and maintenance of kitchen ductwork and fire suppression equipment;
- d. failing to properly and adequately supervise the work being done by its contractors, servants, agents, employees and/or workmen;
- e. failing to properly and adequately instruct its servants, contractors, employees and/or workmen as to the safe and proper housekeeping in a commercial kitchen;
- f. failing to follow safety requirements for the proper installation and maintenance of a commercial kitchen as per NFPA 96 for the ventilation systems and exhaust ductwork in the subject kitchen;
- g. failing to properly extinguish the fire once it initiated;
- h. failing to promptly notify authorities of the fire;
- i. failing to have ductwork properly clean.
- j. allowing the careless utilization of heat source in close proximity to combustible materials;
- k. retaining incompetent, unlicensed employees, agents, servants, workers, subcontractors, with requisite skills and abilities to install and maintain the kitchen exhaust system, and its ductwork at the premises in a safe fashion;
- l. failing to conduct a proper inspection to detect the dangers associated with the poor installation and maintenance of the associated ductwork and fire suppression systems which defendant knew or should have known created an unreasonable risk of fire and the spread of fire;

- m. failing to properly advise local fire authorities of the nature, and hazards associated with the kitchen;
- n. failing to adequately, properly and safely erect, assemble, inspect and test the ventilation system, and exhaust ductwork and/or its internal components to avoid the risk of fire;
- o. failing to ensure that its agents, servants, contractors and/or workmen abided by applicable codes, ordinances, rules and regulations concerning the safe maintenance of the kitchen and the associated ductwork;
- p. failing to do those things which were necessary for safety, preservation and protection of the plaintiff's insured's property; and,
- q. otherwise failing to use due care and proper skill under the circumstances.

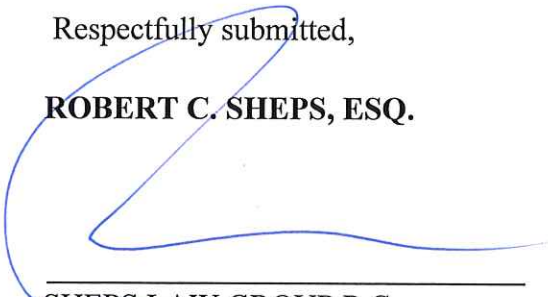
18. As a proximate and direct result of the aforesaid negligence, carelessness, gross negligence and/or negligent omissions of defendants, the fire referred to in paragraph 15 took place and resulted in damage and destruction to Plaintiff's property and business, the fair and reasonable cost of which exceeded THREE MILLION DOLLARS (\$3,000,000.00).

WHEREFORE, plaintiff TRAVELERS demands judgment in their favor and against the defendants in the amount in excess of THREE MILLION DOLLARS (\$3,000,000.00) together with interest, costs and attorney's fees.

Dated: Huntington, New York
May 16, 2018

Respectfully submitted,

ROBERT C. SHEPS, ESQ.



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To:

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111 Church Street
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NEW DANNY CLEANING INC.
37-20 103rd Street
Corona, NY 11368

NY FIRETECH INC.
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Flushing, NY 11358